

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jenzo Duque	Team: Squad #8	CCRB Case #: 201900253	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/05/2019 1:30 AM	Location of Incident: [REDACTED]	Precinct: 76	18 Mo. SOL 7/5/2020	EO SOL 2/19/2021	
Date/Time CV Reported Wed, 01/09/2019 3:39 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 01/09/2019 3:39 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Felix Rosa	14543	953339	076 PCT
2. POM Andrew Zeni	03755	961472	076 PCT
3. An officer			076 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Elio Ponzio	04140	944904	076 PCT
2. POM Man Lee	05570	956833	076 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Zeni	Abuse: At Hamilton Avenue and Clinton Street, Police Officer Andrew Zeni stopped the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
B.POM Felix Rosa	Discourtesy: At Hamilton Avenue and Clinton Street, Police Officer Felix Rosa spoke discourteously to § 87(2)(b)	[REDACTED]
C.POM Felix Rosa	Abuse: At Hamilton Avenue and Clinton Street, Police Officer Felix Rosa searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
D.POM Andrew Zeni	Abuse: At the 76th Precinct stationhouse, Police Officer Andrew Zeni seized § 87(2)(b)'s property.	[REDACTED]
E. An officer	Abuse: An officer damaged § 87(2)(b)'s property.	[REDACTED]
F. An officer	Abuse: An officer searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via phone on January 9, 2019.

On January 5, 2019, at approximately 1:30 a.m., at Hamilton Avenue and Clinton Street in Brooklyn, Police Officer Andrew Zeni of the 76th Precinct stopped § 87(2)(b) vehicle for tinted windows (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Zeni's partner, Police Officer Felix Rosa of the 76th Precinct, then requested § 87(2)(b) license and registration. § 87(2)(b) opened his wallet and removed his documents, exposing an NYPD pendant. PO Rosa allegedly told § 87(2)(b) that the NYPD pendant, "Don't mean shit," and that § 87(2)(b) believed he could "get away with murder" for having such "bullshit" (**Allegation: B: Discourtesy – Word**, § 87(2)(g)). The officers reviewed § 87(2)(b) license for warrants and upon discovering he had an open warrant, arrested him. § 87(2)(b) denied having open warrants and stated he had paperwork proving such inside his vehicle to the officers. PO Rosa then searched § 87(2)(b) vehicle for the paperwork (**Allegation C: Abuse of Authority**, § 87(2)(g)). Sergeant Elio Ponzio of the 76th Precinct responded to the scene and upon determining § 87(2)(b) vehicle was a manual transmission, drove it to the 76th Precinct stationhouse.

PO Rosa and PO Zeni transported § 87(2)(b) to the 76th Precinct stationhouse, processed his arrest, and lodged him in the prisoner holding pen. PO Zeni then returned § 87(2)(b) wallet to him, stating that he removed the NYPD pendant to be vouchered. Upon § 87(2)(b) release from Brooklyn Central Booking, he returned to the 76th Precinct stationhouse and retrieved his property using Property Invoice #§ 87(2)(b). The NYPD pendant was not among the items returned to him. (**Allegation D: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) also retrieved his vehicle, and he observed the center console door was broken, the emergency break did not function, and the rear exterior of his vehicle had been scratched. § 87(2)(b) also observed boxes of paperwork and a spare tire strewn about in the hatchback of his vehicle, and concluded it had been searched (**Allegations E-F: Abuse of Authority**, § 87(2)(g)).

There were four body-worn camera videos available for this incident, from the following MOS: PO Zeni, PO Rosa, Sgt. Ponzio, and Police Office Man Lee of the 76th Precinct (Board Review 01-04).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Andrew Zeni stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Zeni stopped the vehicle in which § 87(2)(b) was an occupant. § 87(2)(b) testified that PO Zeni stopped his vehicle, a Nissan 350 Z with tinted windows, as he completed a left turn onto northbound Hamilton Avenue (Board Review 05). It is further undisputed that § 87(2)(b) vehicle had tinted windows, including the front windshield and rear windshield. PO Zeni and PO Rosa both stated that they observed § 87(2)(b) vehicle had tinted windows, and that PO Zeni stopped his vehicle because of such (Board Review 06) (Board Review 07). Furthermore, PO Zeni's body-worn camera footage captured the officers testing § 87(2)(b) windows for their tint gradient, which was approximately 40 percent (Board Review 08). § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

New York Vehicle and Traffic Law § 375 12-a Subsection B-2 (Board Review 09) states, “No person shall operate any motor vehicle upon any public highway, road or street...[with] sidewings or side windows of which...are composed of, covered by or treated with any material which has a light transmittance of less than seventy percent.”

§ 87(2)(b), § 87(2)(g)

Allegation (B) Discourtesy - Word: Police Officer Felix Rosa spoke discourteously to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) testified that after PO Zeni stopped his vehicle, PO Rosa requested § 87(2)(b)'s license and registration. § 87(2)(b) opened his wallet and removed his documents, exposing an NYPD pendant and a PBA card in the process. PO Rosa told § 87(2)(b) that the NYPD pendant, “Don’t mean shit,” and that § 87(2)(b) believed he could “get away with murder” for having such “bullshit.” § 87(2)(b), § 87(2)(g)

PO Rosa denied directing profanity at § 87(2)(b) (Board Review 07), and while both Sgt. Ponzo and PO Zeni did not recall if PO Rosa did so (Board Review 10) (Board review 06), PO Rosa’s body-worn camera video footage did not capture PO Rosa speaking discourteously to § 87(2)(b) at any point during the incident (Board Review 01).

§ 87(2)(b), § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Felix Rosa searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Rosa searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) testified that after he provided his documentation to PO Rosa, the officers reviewed it, stating that he was under arrest for an open warrant (Board Review 05). § 87(2)(b) denied having any open warrants as they handcuffed him, and the officers placed him in the rear of their vehicle. PO Rosa then leaned into the driver’s seat of § 87(2)(b) vehicle. § 87(2)(b) assumed PO Rosa was searching for paperwork beside the driver’s seat. From his vantage point, § 87(2)(b) could not see if PO Rosa removed anything from inside his vehicle. PO Rosa and PO Zeni corroborated that § 87(2)(b) denied having any open warrants (Board Review 07) (Board Review 06); however, they both testified that § 87(2)(b) told the officers to search inside his vehicle for paperwork exonerating him of warrants. PO Rosa and PO Zeni both stated that they searched inside § 87(2)(b) vehicle in a limited capacity, in the locations specified by § 87(2)(b)

§ 87(2)(b) retrieved his property using Property Invoice #§ 87(2)(b) (Board Review 15); however, the NYPD pendant was not among the items returned to him. While PO Rosa and Sgt. Ponzo consistently testified they had no knowledge of § 87(2)(b) possessing an NYPD pendant, and they both denied witnessing PO Zeni seize an NYPD pendant from § 87(2)(b) (Board Review 07) (Board Review 10), PO Zeni corroborated that he and § 87(2)(b) discussed § 87(2)(b) property in the prisoner holding pen (Board Review 06). PO Zeni testified that he informed § 87(2)(b) that his property would be vouchered and that he could retrieve said property upon his release from police custody. PO Zeni also informed § 87(2)(b) that the pin in his wallet could not accompany § 87(2)(b) to Brooklyn Central Booking, as it was made of metal. PO Zeni told § 87(2)(b) he would voucher the pin and that § 87(2)(b) could retrieve it at a later point in time. PO Zeni denied seizing § 87(2)(b)'s property.

According to Property Invoice #§ 87(2)(b) (Board Review 15), one, "metal pinback button" was vouchered among § 87(2)(b) general property for safekeeping. The remarks section of the invoice states that on the incident date at approximately 3:50 a.m., the above listed items were vouchered with § 87(2)(b) consent. However, neither the copy of the invoice provided by § 87(2)(b) nor the copy of the invoice provided by the NYPD lists § 87(2)(b) property as being released back into § 87(2)(b) custody.

§ 87(2)(b), § 87(2)(g)

Allegation (E) Abuse of Authority: An officer damaged § 87(2)(b) property.

Allegation (F) Abuse of Authority: An officer searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) testified that he did not encounter his vehicle until after he was released from Brooklyn Central Booking and returned to the 76th Precinct stationhouse to retrieve his property. § 87(2)(b) observed the center console door was broken, the emergency break did not work, and the rear exterior of his vehicle had been scratched. § 87(2)(b) denied any of the damage existing prior to the incident, but had no documentation of the vehicle's condition prior to or after the incident. § 87(2)(b) also observed boxes of paperwork and a spare tire strewn about in the hatchback of his vehicle, and concluded it had been searched (Board Review 05).

PO Rosa, PO Zeni, and Sgt. Ponzo consistently testified that Sgt. Ponzo transported § 87(2)(b) vehicle from the scene to the stationhouse because it was a manual transmission, and that the interior of § 87(2)(b) vehicle was in fair to worn condition at the time of the stop (Board Review 07) (Board Review 06) (Board Review 10). Sgt. Ponzo denied searching inside the vehicle in any capacity and he denied damaging it while in transit to the stationhouse. Sgt. Ponzo did not recall to whom he released § 87(2)(b) vehicle at the stationhouse.

Sgt. Ponzo's body-worn camera video footage corroborated the reason he transported § 87(2)(b) vehicle and did not capture him searching or damaging it (Board Review 14). However, Sgt. Ponzo's body-worn camera video footage ended before he arrived at the stationhouse and released § 87(2)(b)'s vehicle to other officers.

§ 87(2)(b), § 87(2)(g)

However,

according to Property Invoice #§ 87(2)(b) for § 87(2)(b) vehicle (Board Review 16), PO Zeni conducted an invoicing inspection, reviewing the trunk and glove compartment. The inspection further notes that the interior and exterior condition of the vehicle was poor, and that there were no missing or damaged parts yielded from the inspection.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Zeni has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.
- PO Rosa has been a member of service for six years and has been a subject in two CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Ponzo has been a member of service for 11 years and has been a subject in five CCRB complaints and six allegations, five of which were not substantiated and one which is pending investigation. Sgt. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As May 24, 2019 the New York City Office of the Comptroller has no record of a notice of claim in regards to this complaint (Board Review 18).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 19).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____

Signature

Print Title & Name

Date

Page 7

CCRB Case # 201900253